IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

Crl.MC.No. 2527 of 2007()

CC.195/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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PETITIONER: ACCUSED NO.5

JOTHI, S/O.VALAYIL SAHADEVAN,
SANTHI ROAD, MANAVALASSERI.

BY ADV. SRI.C.HARIKUMAR
SRI.VIZZY GEORGE KOKKAT
SRI.ARAVINDA KUMAR BABU T.K.

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2527 of 2007

Dated this the 7th day of August 2007

O R D E R

The petitioner is the fifth accused in a prosecution for offences punishable inter alia under Section 380 I.P.C. Cognizance was taken on the basis of a final report submitted by the police after due investigation. The petitioner entered appearance. Charges were framed against him. Trial commenced. It reached the stage of 313 statement. At that stage, the petitioner started not appearing. Reckoning the petitioner as an absconding accused, the trial against the other accused proceeded. All the other co-accused who faced trial have been found not guilty and acquitted, it is submitted. According to the petitioner, he is also absolutely innocent. His absence/failure to appear was on account of reasons beyond his control. The petitioner was compelled to go abroad to eke out a living. He has now come back. He is prepared to appear before the learned Magistrate and co-operate for the expeditious disposal of the case against him. A warrant of arrest issued by

the learned Magistrate is chasing him. He apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

2. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

3. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

4. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail,

after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. The learned counsel for the petitioner airs an apprehension that de novo trial may be held. I find no basis for such apprehension at all. The interrupted trial against the petitioner need continue only from the point of interruption. De novo trial is certainly not necessary at all. I make this clarification in view of the apprehension aired by the petitioner.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007